
SENATE BILL No. 395

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-12-29; IC 6-2.3; IC 6-3.1-1-3; IC 6-3.1-27.

Synopsis: Renewable energy production incentives. Provides: (1) a property tax deduction for organic waste biomass conversion units; (2) a tax credit for the purchase of electricity generated from an organic waste biomass conversion unit; and (3) a tax credit for a qualified investment made to convert dried distiller's grain produced as a byproduct of the production of ethanol into biodiesel and ethanol.

Effective: January 1, 2007 (retroactive); March 1, 2007 (retroactive); July 1, 2007.

Weatherwax

January 11, 2007, read first time and referred to Committee on Tax and Fiscal Policy.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 395

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-12-29 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE MARCH 1, 2007 (RETROACTIVE)]: Sec.
3 29. (a) As used in this section, "organic waste biomass conversion
4 unit" means tangible property:

5 (1) not owned by a person primarily engaged in the
6 generation or retail sale of electricity, gas, or thermal energy;

7 (2) reported to the Indiana utility regulatory commission
8 before construction begins, as required under IC 8-1-8.5-7;
9 and

10 (3) directly used to produce electricity of eighty (80)
11 megawatts capacity or less from agricultural livestock waste
12 nutrients (as defined in 26 U.S.C. 45) or other agriculture
13 sources, including distiller's grains, kitchen waste, orchard
14 tree crops, vineyard produce, grain, legumes, sugar, and other
15 crop byproducts or residues.

16 The term includes metering devices, relays, locks and seals,
17 breakers, automatic synchronizers, and other control and



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protective apparatus designated for safe, efficient, and reliable interconnection to an electric utility's system. The term does not include tangible property that uses municipal solid waste or uses fossil fuel in an amount exceeding the minimum amount of fossil fuel required for any necessary startup and flame stabilization.

(a) (b) For purposes of this section, "wind power device" means a device, such as a windmill or a wind turbine, that is designed to utilize the kinetic energy of moving air to provide mechanical energy or to produce electricity.

(b) (c) The owner of real property, or a mobile home that is not assessed as real property, that is equipped with:

(1) a wind power device; or

(2) an organic waste biomass conversion unit;

is entitled to an annual property tax deduction.

(d) The amount of the deduction equals the remainder of:

(1) the assessed value of the real property or mobile home with the wind power device tangible property described in subsection (c)(1) or (c)(2) included; minus

(2) the assessed value of the real property or mobile home without the wind power device tangible property described in subsection (c)(1) or (c)(2).

SECTION 2. IC 6-2.3-1-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 2.4. "Commission" refers to the Indiana utility regulatory commission.**

SECTION 3. IC 6-2.3-1-5.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: **Sec. 5.8. "Organic waste biomass conversion unit" has the meaning set forth in IC 6-1.1-12-29.**

SECTION 4. IC 6-2.3-5.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]:

Chapter 5.3. Credits

Sec. 1. A taxpayer is entitled to the credits against the taxpayer's tax liability provided in this chapter.

Sec. 2. (a) If the amount of a credit granted under this chapter for a taxpayer in a taxable year exceeds the taxpayer's tax liability for that taxable year, the taxpayer may carry the excess over to not more than three (3) subsequent taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under

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1 this chapter for any subsequent taxable year.

2 (b) A taxpayer is not entitled to a carryback or refund of an
3 unused credit.

4 Sec. 3. To apply a credit granted under this chapter against the
5 taxpayer's tax liability, a taxpayer must claim the credit on the
6 taxpayer's tax return or returns in the manner prescribed by the
7 department. A taxpayer claiming a credit under this chapter shall
8 submit to the department any additional information that the
9 department determines is necessary for the department to
10 determine whether the taxpayer is eligible for the credit.

11 Sec. 4. The amount of a credit granted under this chapter shall
12 be disregarded by the commission in determining a taxpayer's
13 rates.

14 Sec. 5. (a) A taxpayer that purchases electricity for resale at
15 retail from an individual or entity that:

- 16 (1) operates an organic waste biomass conversion unit; and
17 (2) generates the electricity from the organic waste biomass
18 conversion unit;

19 is entitled to a credit against the taxpayer's tax liability in the
20 taxable year in which the electricity is received.

21 (b) The amount of the credit is equal to the result determined
22 under STEP FOUR of the following formula:

23 STEP ONE: Determine the rate per kilowatt hour that the
24 taxpayer would be obligated to pay for the electricity under
25 170 IAC 4-4.1-9 (as effective January 1, 2007), as applied
26 without:

27 (A) regard to whether the taxpayer is an electric utility (as
28 defined in 170 IAC 4-4.1-1 (as effective January 1, 2007));
29 and

30 (B) any changes resulting from the negotiation of a
31 different rate between the taxpayer and the electric power
32 producer.

33 STEP TWO: Determine the greater of zero (0) or the
34 difference determined by subtracting the STEP ONE amount
35 from the rate per kilowatt hour that the taxpayer paid for the
36 electricity.

37 STEP THREE: Determine the lesser of the following:

38 (A) The STEP TWO result.

39 (B) The greater of zero (0) or fifty percent (50%) of the
40 result determined by subtracting the STEP ONE amount
41 from the average retail rate at which the taxpayer sells a
42 kilowatt hour of electricity to residential customers (or all

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customers if the taxpayer does not sell electricity at retail to residential customers) during the same rating period.

STEP FOUR: Determine the greater of zero (0) or the product determined by multiplying the STEP THREE result by the number of kilowatt hours purchased by the taxpayer during the rating period.

SECTION 5. IC 6-3.1-1-3, AS ADDED BY P.L.199-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. A taxpayer (as defined in the following laws), pass through entity (as defined in the following laws), or shareholder, partner, or member of a pass through entity may not be granted more than one (1) tax credit under the following laws for the same project:

- (1) IC 6-3.1-10 (enterprise zone investment cost credit).
- (2) IC 6-3.1-11 (industrial recovery tax credit).
- (3) IC 6-3.1-11.5 (military base recovery tax credit).
- (4) IC 6-3.1-11.6 (military base investment cost credit).
- (5) IC 6-3.1-13.5 (capital investment tax credit).
- (6) IC 6-3.1-19 (community revitalization enhancement district tax credit).
- (7) IC 6-3.1-24 (venture capital investment tax credit).
- (8) IC 6-3.1-26 (Hoosier business investment tax credit).
- (9) IC 6-3.1-27-10.5 (dried distiller's grain conversion to biodiesel tax credit).**

If a taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity has been granted more than one (1) tax credit for the same project, the taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity must elect to apply only one (1) of the tax credits in the manner and form prescribed by the department.

SECTION 6. IC 6-3.1-27-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4.5. As used in this chapter, "qualified investment" means the amount of a taxpayer's expenditures for:**

- (1) the purchase of new equipment;**
- (2) the purchase of new computers and related equipment;**
- (3) costs associated with the modernization of existing facilities;**
- (4) onsite infrastructure improvements;**
- (5) the construction of new facilities;**
- (6) costs associated with retooling existing machinery and equipment;**

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(7) costs associated with the construction of special purpose buildings and foundations; and

(8) costs of obtaining rights to use any patented process and any related trademark, if the rights are acquired from an entity that:

(A) does not have control of or a material, direct, or indirect ownership interest in:

- (i) the taxpayer that makes a qualified investment; or
- (ii) another entity that has control of or a material, direct, or indirect ownership interest in the taxpayer; and

(B) is not an entity in which:

- (i) the taxpayer that makes a qualified investment; or
- (ii) another entity that has control of or a material, direct, or indirect ownership interest in the taxpayer; has control of or a material, direct, or indirect ownership interest;

that are certified by the corporation under section 10.5 of this chapter as being eligible for the credit under section 10.5 of this chapter.

SECTION 7. IC 6-3.1-27-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.5. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year in which the taxpayer places in service a qualified investment to:**

- (1) extract corn oil from dried distiller's grain that is produced as a byproduct of the production of ethanol;
- (2) convert corn oil described in subdivision (1) into biodiesel; and
- (3) convert unfermented residues in distiller's grains into additional ethanol using cellulose conversion technology.

The amount of the credit to which a taxpayer is entitled is the amount of the taxpayer's qualified investment that is placed in service in the taxable year.

(b) To be entitled to a credit under this section, a taxpayer must request that the corporation determine whether an expenditure is a qualified investment. To make a request for a determination, a taxpayer must file with the corporation an application in the form and in the manner specified by the corporation. The application must be filed with the corporation before the taxpayer takes a substantial step toward improving the site where the qualified investment will be placed in service.

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(c) After receiving an application for a credit under this section, the corporation shall review the application to determine whether the proposed expenditure is a qualified investment described in subsection (a) and the amount of the credit under this section to which the applicant would be entitled. The corporation shall send to the taxpayer and to the department of state revenue a letter:

(1) certifying that the taxpayer is entitled to claim the credit under this section for a qualified investment; or

(2) stating the reason why the taxpayer is not entitled to claim the credit.

If a taxpayer receives a credit under this section, the property for which the credit was granted must be placed in service not more than five (5) years after the corporation issues a letter under this section certifying that the taxpayer is entitled to claim the credit.

(d) If a taxpayer receives a credit under this section and does not make the qualified investment (or a part of the qualified investment) for which the credit was granted within the time required by subsection (c), the corporation may require the taxpayer to repay the following:

(1) The additional amount of state tax liability that would have been paid by the taxpayer if the credit had not been granted for the qualified investment (or part of the qualified investment) that was not made by the taxpayer within the time required by subsection (c).

(2) Interest at a rate established under IC 6-8.1-10-1(c) on the additional amount of state tax liability referred to in subdivision (1).

(e) The corporation shall determine the maximum amount of credits to which a taxpayer is entitled under this section. The corporation may not grant under this section more than ten million dollars (\$10,000,000) in credits for all taxpayers for all taxable years. The corporation may not grant under this section more than two million dollars (\$2,000,000) in credits to any one (1) taxpayer or for any one (1) location for all taxable years.

SECTION 8. IC 6-3.1-27-13, AS AMENDED BY P.L.191-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. To receive the credit provided by this chapter, a taxpayer must do the following:

(1) Claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

(2) Provide a copy of the certificate of the corporation finding:
(A) that the taxpayer; or

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1 (B) if the taxpayer is a shareholder, partner, or member of a
2 pass through entity, that the pass through entity;
3 is eligible for the credit under IC 5-28-6-3 **or section 10.5 of this**
4 **chapter.**

5 (3) Submit to the department proof of all information that the
6 department determines is necessary for the calculation of the
7 credit provided by this chapter.

8 The department may require a pass through entity to provide
9 informational reports that the department determines necessary for the
10 department to calculate the percentage of a credit provided by this
11 chapter to which a shareholder, partner, or member of the pass through
12 entity is entitled.

13 SECTION 9. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]
14 (a) **IC 6-1.1-12-29, as amended by this act, applies only to property**
15 **taxes first due and payable after December 31, 2007.**

16 (b) **IC 6-2.3-5.3, as added by this act, applies only to taxable**
17 **years beginning after December 31, 2006.**

18 (c) **IC 6-3.1-27-10.5, as added by this act, applies only to**
19 **qualified investments placed in service after December 31, 2007.**

20 SECTION 10. An emergency is declared for this act.

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